

**WORKING MATERIALS  
INDOOR SMOKING OPTIONS  
AND ALTERNATIVES**

**2046356002**

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## **ILLUSTRATIVE INDOOR SMOKING PROVISIONS**

[These are illustrative provisions tendered for discussion purposes only and do not represent the views of any individual, company, or hearing participant.]

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Section . INDOOR SMOKING.

A. Where indoor smoking is not already a subject of collective bargaining, employers who elect to permit indoor smoking shall establish a written policy regarding smoking.

B. In consultation with employees, through committee or otherwise, the indoor smoking policy shall be developed, reflecting the following:

1. Depending upon the configuration of the particular indoor workplace and employee preferences, the smoking policy may:
  - (a) permit smoking in common work areas and/or in private offices;
  - (b) require the simple separation of smokers and nonsmokers;
  - (c) establish physically separate smoking and nonsmoking areas; or
  - (d) restrict smoking to designated smoking areas.
2. For those indoor workplaces that are open to the public, the smoking policy may also address the preferences of smoking and nonsmoking customers.
3. The policy shall require that appropriate signs providing reasonable notice of the smoking policy and its requirements, are posted.

C. Employers who provide designated smoking areas shall adhere to the following:

1. If smoking is restricted to designated smoking areas:
  - a. Smoking shall be allowed only in clearly posted, designated smoking areas;
  - b. The designated smoking areas shall operate with existing HVAC equipment at full capacity and, where practicable, under negative pressure with respect to adjoining indoor spaces; and
  - c. Separate exhausts from the designated smoking area may be utilized.
2. Designated smoking areas shall be adequately ventilated in accordance with applicable building codes and standards.
3. The employer shall periodically inspect the HVAC system serving the designated smoking areas to ensure that the system is operating as intended.
4. Nonsmoking employees may voluntarily enter designated smoking areas but they shall not be required, as a part of normal job responsibilities, to enter designated smoking areas which are established pursuant to this subsection.

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5. The employer shall insure that cleaning and maintenance work is conducted in designated smoking areas only when smoking is not taking place.

D. Nothing in this standard shall be construed to:

1. Require an employer to provide a designated smoking area; or to
2. Prevent an employer from adopting a smoking policy in areas, facilities or workplaces not covered by this standard, or, in consultation with employees, from prohibiting smoking.

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**ILLUSTRATIVE  
INDOOR SMOKING  
PROVISIONS**

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or hearing participant.]

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Section . INDOOR SMOKING.

A. Where indoor smoking is not already a subject of collective bargaining, employers who elect to permit smoking indoors shall adopt and enforce a written smoking policy after ascertaining the preferences of interested employees.

1. Depending upon the configuration of the particular indoor workplace, applicable smoking laws and employee preferences, the smoking policy may:
  - (a) permit smoking in common work areas and/or in private offices;
  - (b) group smokers and nonsmokers;
  - (c) require the use of fans, vents or air filtration devices;
  - (d) establish physically separate smoking and nonsmoking areas; or
  - (e) restrict smoking to designated smoking areas.
2. For those indoor workplaces that are open to the public, the smoking policy may also take customer preferences into consideration.
3. The employer shall post appropriate signs to provide reasonable notice of the smoking policy and its requirements.

B. If smoking is restricted to designated smoking areas:

1. Smoking shall be allowed only in clearly posted areas;

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2. The designated smoking areas shall operate with existing HVAC equipment at full capacity and, where practicable, under negative pressure with respect to adjoining indoor spaces;
3. Separate exhausts from the designated smoking area may be utilized.
4. The employer shall periodically inspect the HVAC system serving the designated smoking areas to ensure that the system is operating as intended.
5. Nonsmoking employees may voluntarily enter designated smoking areas but they shall not be required, as a part of normal job responsibilities, to enter designated smoking areas.
6. The employer shall insure that cleaning and maintenance work is conducted in designated smoking areas only when smoking is not taking place.

C. Nothing in this standard shall be construed to:

1. Require an employer to provide a designated smoking area; or to
2. Prevent an employer from adopting a smoking policy in areas, facilities or workplaces not covered by this standard, or
3. After considering the preferences of employees, from prohibiting smoking.

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**ILLUSTRATIVE  
INDOOR SMOKING  
PROVISIONS**

[These are illustrative provisions tendered for discussion purposes only and do not represent the views of any individual, company, or hearing participant.]

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Section . INDOOR SMOKING.

A. Consistent with business need, employee preferences, collective bargaining agreements and applicable laws:

1. Where smoking is permitted indoors, employers shall establish a written smoking policy.
2. At a minimum, the smoking policy shall contain the following provisions:
  - (a) A clear description of those areas in which smoking is permitted/restricted in the workplace;
  - (b) Procedures to be followed in addressing complaints; and
  - (c) Sanctions to be imposed for failure to comply with the smoking policy.

B. If the smoking policy established pursuant to part A of this section provides for designated smoking areas:

1. The designated smoking areas shall be clearly posted;
2. The designated smoking areas shall operate with existing HVAC equipment at full capacity and, where practicable, under negative pressure with respect to adjoining indoor spaces;
3. The employer shall periodically inspect the HVAC system serving the designated smoking areas to ensure that the system is operating as intended;

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4. Nonsmoking employees may voluntarily enter designated smoking areas but they shall not be required, as a part of normal job responsibilities, to enter designated smoking areas;
5. The employer shall ensure that cleaning and maintenance work is conducted in designated smoking areas only when smoking is not taking place; and
6. Separate exhaust from the designated smoking area may be utilized.

C. Nothing in this standard shall be construed to:

1. Require an employer to provide a designated smoking area; or to
2. Prevent an employer from adopting a smoking policy in areas, facilities or workplaces not covered by this standard, or
3. Consistent with employee and customer preferences, from prohibiting smoking.

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**ILLUSTRATIVE  
INDOOR SMOKING  
PROVISIONS**

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views of any individual, company,  
or hearing participant.]

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Section . INDOOR SMOKING.

A. Employers who permit smoking indoors shall minimize the exposure of nonsmokers to environmental tobacco smoke by adopting one or more of the following practices:

- (1) permitting smoking only in private offices;
- (2) separating smokers and nonsmokers;
- (3) establishing physically separate smoking and nonsmoking areas;
- (4) requiring the use of fans, vents or air filtration devices in areas where smoking is permitted; or
- (5) restricting smoking to designated smoking areas.

B. If smoking is restricted to designated smoking areas:

- (1) Smoking shall be allowed only in clearly posted, designated smoking areas;
- (2) The designated smoking areas shall operate with existing HVAC equipment at full capacity and, where practicable, under negative pressure with respect to adjoining indoor spaces;
- (3) The employer shall periodically inspect the HVAC system serving the designated smoking areas to ensure that the system is operating as intended;
- (4) Nonsmoking employees may voluntarily enter designated smoking areas but they shall not be required, as a part of normal job responsibilities, to enter designated smoking areas;

- (5) The employer shall ensure that cleaning and maintenance work is conducted in designated smoking areas only when smoking is not taking place; and
- (6) Separate exhaust from the designated smoking area may be utilized.

C. Nothing in this standard shall:

- (1) Require an employer to provide a designated smoking area;
- (2) Prevent an employer from adopting a smoking policy in areas, facilities or workplaces not covered by this standard; or
- (3) In consultation with employees, prevent an employer from prohibiting smoking.

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The people of the State of California do enact as follows:

SECTION 1. Division 20, Chapter 10.8 (commencing with Section 25940) of the Health and Safety Code is amended to read:

DIVISION 20, Chapter 10.8. REGULATION OF INDOOR AIR QUALITY

§ 25940.5. Legislative findings and declarations

(a) The Legislature finds and declares as follows:

(1) Residents of the State of California spend up to 90 percent of a day indoors and, as a result, have a significant potential for exposure to poor indoor air quality.

(2) Scientific data and building investigations suggest that poor indoor air quality is responsible for occupant health and comfort complaints and that, of these complaints, the majority are associated with inadequate ventilation.

(3) Energy saving features and aging, poorly maintained heating, ventilation and air conditioning systems in many indoor spaces in California have substantially reduced the outdoor air exchange and indoor air distribution or otherwise contributed to an

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increased potential for elevated concentrations of indoor air constituents in those structures.

(4) Indoor air is composed of a complex mixture of substances that may be associated with or may include substances that are associated with illness or discomfort in persons exposed.

(5) Indoor air quality problems are not easily definable nor are specific health effects easily quantifiable; yet, poor indoor air quality is estimated to cause significant increases in medical costs and decreases in worker productivity in California.

(b) The Legislature further finds and declares the following:

(1) The State of California has not adequately protected the public from exposure to poor indoor air quality that may occur in public places or nonindustrial workplaces.

(2) It is in the public interest to reduce exposure to poor indoor air quality by developing a comprehensive program to address the requirements for indoor air quality in public places and nonindustrial workplaces, including office buildings, schools, health care facilities and commercial establishments. In so doing, it is in the public interest to pursue an overall, building systems approach to indoor air quality.

§ 25941. For the purposes of this chapter, the following definitions shall apply:

(a) "ASHRAE" means American Society of Heating Refrigeration and Air-conditioning Engineers, Incorporated.

(b) "Building" means a structure of greater than twenty-five thousand square feet (25,000) of floor space, of two (2) or more floors, using mechanical ventilation providing outdoor air, recirculated air or a mixture of outdoor and recirculated air, in which two (2) or more persons work, convalesce or otherwise occupy for a period of one (1) hour or more during any twenty-four (24) hour period. "Building" includes public buildings and non-industrial workplaces. "Building" does not include residential facilities.

(c) "Building owner" means any individual, partnership, corporation, county, city, town or village that owns the freehold of a premises or any lesser estate therein, a mortgagee or vendee in possession, a contract vendee, assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation in control of a building containing commercial establishments or public places covered by this division, or the agent of such person(s) (e.g., building manager or facility manager or other person who has control of the building).

(d) "Employer" means any person or entity which employs employees and operates a workplace with 10 or more employees.

(e) "HVAC system" means the collective components of the heating, ventilation and air conditioning system for any indoor space.

(f) "Indoor" means the enclosed portions of nonresidential buildings, including public buildings, commercial buildings, health care facilities and schools.

(g) "Indoor air constituent" means any chemical substance or biological organism, including combinations or mixtures of substances or organisms, known to occur in the indoor air environment.

(h) "Nonindustrial workplace" means an indoor occupied space such as, but not limited to, offices, educational facilities, commercial establishments and health care facilities. It does not include areas such as manufacturing and production facilities, laboratories, residences, vehicles, building construction worksites (where the building is not occupied by employees covered under this Act), agricultural operations and offices where employees are directly involved in production or manufacturing processes (e.g., small quality control offices where employees move frequently in

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and out to production areas). Office areas located at a manufacturing or production facility where employees are not directly involved in production or manufacturing processes are included in the scope of this division.

(i) "Public place" means any enclosed indoor area open to the general public including, but not limited to, a theater, educational facility, health facility, retail services establishment, restaurant, gymnasium, health spa, library, museum and gallery.

(j) "Workplace" means that portion of any enclosed indoor area in which members of the general public are not permitted.

#### § 25942. HVAC system standards; maintenance; testing

(a) The recognized standards of ASHRAE, known as ASHRAE 55-1981 (Thermal Environmental Conditions for Human Occupancy) and ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), are hereby adopted as standards for evaluating indoor air quality in all buildings or portions of buildings subject to this chapter.

(b) Every building owner or employer, as appropriate, shall use all reasonable efforts to maintain and operate HVAC systems during all work shifts to provide adequate ventilation in

compliance with the ASHRAE standards adopted in part (a) of this subsection. Relative humidity should be maintained below 60% in any season to prevent and reduce the growth of biological contaminants.

(c) Air filters or dust collectors shall have an efficiency rating of at least 60% using the test methods prescribed by ASHRAE Standard 52-1976 and shall be fitted so as to prevent air by-pass.

(d) In buildings or portions of buildings equipped with mechanical ventilation systems in which the ventilation rate requirements of paragraph (a) cannot be met through practicable adjustments to the systems, such systems shall be operated during normal working hours at the design capacity for the intake of outdoor air and periodic representative samples of carbon dioxide shall be taken. If the indoor carbon dioxide level exceeds 1,000 parts per million, appropriate steps shall be taken to improve the indoor air quality, such as the utilization of supplemental local ventilation, the relocation and dispersal of employees and occupants or the redesign of work spaces.

(e) Maintenance and Performance Testing.--

(1) Every building owner or employer, as appropriate, shall designate a qualified person(s) (e.g., contractor, company,

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agency or department) to be responsible for the operation and maintenance of the HVAC system and to conduct periodic performance testing. The qualified person(s) designated for these tasks shall be knowledgeable in the principles of HVAC system operation and maintenance, HVAC testing procedures, the requirements of the ASHRAE standards and the specific HVAC system serving the building or office.

(2) The building owner or employer, as appropriate, shall ensure that HVAC system components are inspected and replaced, cleaned or calibrated as specified by current design specifications or manufacturer recommendations. These components include, but are not limited to, filters, drip pans and drainage piping, heating and cooling coils, supply/exhaust vents and louvers, motor belts, humidifiers, air cleaners and thermostats. Damaged or inoperable components shall be replaced or repaired as appropriate. Additionally, any reservoirs or parts of this system with standing water shall be checked for microbial growth.

(3) The building owner or employer, as appropriate, shall further ensure that inspection and maintenance procedures are documented by records, logs or appropriate seals affixed directly to HVAC system components.

(4) The building owner or employer, as appropriate, shall ensure that HVAC performance testing is conducted and repeated at regularly scheduled intervals sufficient to confirm that the ventilation system(s) works as designed, and performance meets specifications under the full range of building operating conditions. Building owners and employers shall maintain adequate documentation of such testing.

(f) Procedures shall be established by building owners and employers for investigating occupant and employee complaints related to indoor air quality in buildings covered by this division. Such procedures shall include an initial evaluation within a reasonable time of all good faith complaints and, where further steps are appropriate to address the complaint, an investigation of compliance with this section and appropriate corrective action. The identity of any building occupant or employee who requests that an indoor air quality investigation be conducted pursuant to this paragraph shall not be disclosed by the person receiving the complaint unless the complaining building occupant or employee expressly and in writing waives the protection afforded by this paragraph.

(g) Information and training shall be provided to assure that building occupants and employees are made aware of the provisions of the standard and their rights thereunder, the importance of

adequate ventilation and any changes made in the indoor space that may affect indoor air quality.

§ 25943. Specific indoor air constituents; controls

(a) Renovation work, new construction, cleaning operations and pesticide applications that result in the diffusion of dust, stone and other small particles, toxic gases or other harmful substances in quantities sufficient to produce adverse health effects shall be safeguarded by means of local ventilation or other protective devices to insure the safety of occupants, employees and the public. Renovation areas in occupied buildings shall be isolated and dust and debris shall be confined to the renovation or construction area. Following completion of construction or renovation work, the building owner or employer, as appropriate, shall ensure that appropriate measures are taken to allow materials to "offgas" prior to occupancy.

(b) Before use of paints, adhesives, sealants, solvents or installation of insulation, particle board, plywood, floor coverings, carpet backing, textiles or other materials in the course of renovation or construction, the building owner, employer or hired contractor shall check product labels or seek and obtain information from the manufacturers of those products on whether or not they contain volatile organic compounds such as solvents,

formaldehyde or isocyanates that could be emitted during regular use. This information shall be used to select products and to determine necessary measures, if any, to be taken to comply with this paragraph.

(c) Smoking tobacco will be permitted in buildings, subject to the following restrictions:

(1) Smokers with private offices may smoke in their offices.

(2) Where smokers do not have private offices, they may smoke in a separate smoking room or lounge with adequate ventilation.

(3) Where nonsmokers are present and are bothered by the smoking of others, the problem may be resolved by:

(i) seeking an accommodation on an individual basis with recourse to common courtesy and mutual tolerance;

(ii) improving ventilation;

(iii) relocating a workstation;

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(iv) grouping smokers and nonsmokers;

(v) using desk top air cleaners or "smokeless" ashtrays for smokers; or

(vi) partitioning open office spaces.

(4) Specially designated smoking areas shall be established in all indoor public places, including means and buildings of public transport, medical and health care centers, educational institutions, restaurants, coffee shops and entertainment clubs, to provide for the separation of smokers and nonsmokers.

(5) Designated smoking areas must have clear signs.

(d) Direct entry or infiltration of radon, odors, fumes, vehicle exhaust, and other air pollutants through outdoor air intakes; intentional openings in the building shell such as loading docks, stairwells, elevator shafts or other openings; and unintentional openings in the building shell such as around doors, windows, utility entrances, cracks and holes; shall be prevented by engineering controls or architectural design.

(e) Re-entrainment into the building of pollutants from building exhausts, plumbing vents, drain piping, etc. shall be prevented by engineering controls.

(f) The building owner or employer, as appropriate, shall ensure that the operation and maintenance of equipment, activities and processes that have the potential to produce potentially harmful indoor air constituents are being operated and maintained properly.

(g) The building owner or employer, as appropriate, shall control biological contamination by promptly replacing or properly cleaning porous materials that have been moisture damaged. In addition, visible mold or algae shall not be growing in ductwork, humidifiers or other HVAC system components.

(h) Before any indoor workplace in a newly constructed or renovated building or portion of a building is occupied by any employee, the building shall be commissioned in accordance with ASHRAE GPC-1, "Guideline for Commissioning of HVAC Systems."

§ 25944. Satisfaction of legal duty

A building owner or employer who provides ventilation for any building covered by this division in accordance with the ASHRAE

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standards adopted herein shall be presumed to have satisfied any applicable legal duty with respect to indoor air quality for employees or members of the general public. The presumption shall not be deemed to supersede any occupational safety and health standard adopted by the Occupational Safety and Health Administration pursuant to Section 6(B) of the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), or a standard promulgated by the Division of Occupational Health Safety.

§ 25945. Occupational Safety and Health Standard; Sanctions.

The Division of Occupational Safety and Health of the Department of Industrial Relations shall present to the Occupational Safety and Health Standards Board, pursuant to Labor Code section 147.1, and the Board shall adopt, occupational safety and health standards consistent with the provisions of this division. An employer who violates an occupational safety and health standard adopted under this section shall be subject to the sanctions and remedies provided in Division 5, Part 1 (commencing with section 6300) of the Labor Code.

SECTION 2. Chapter 10.8 (commencing with Section 25940) of Division 20 of the Health and Safety Code is repealed.

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On Improving Indoor Air Quality

Art. 1

State and self-government bodies are obliged to undertake activities aimed at preventing the negative effects of indoor air quality problems, and to provide support in this area to building owners and tenants.

Art. 2

1. Scientific studies and building investigations reveal that poor indoor air quality (IAQ) is responsible for occupant complaints and that of these complaints, the majority are associated with poor ventilation.
2. The composition of indoor air may include chemical and biological substances that have been related to illness or discomfort in persons who are exposed to the indoor air.
3. Energy saving features and aging, poorly maintained heating, ventilating and air conditioning systems in many buildings have substantially reduced the outdoor air exchange or otherwise contributed to increased concentrations of air pollutants in these structures.
4. IAQ problems are not easily definable nor are specific health effects easily quantifiable.
5. It is in the public interest to reduce exposure to poor IAQ by developing a comprehensive program to address requirements for IAQ in public and private buildings, schools, health care facilities, offices and commercial establishments, and to educate the public regarding IAQ issues. In so doing, it is in the public interest to pursue an overall, building systems approach to IAQ.

Art. 3

A Director of IAQ shall be appointed, and, subject to available funds, the Director may establish a public information program to educate the public on IAQ, and on effective, practical methods for preventing, detecting and correcting the causes of poor IAQ. The Director may also conduct building investigations and scientific studies to analyze and quantify the extent of poor IAQ in selected buildings with IAQ problems.

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#### **Art. 4**

Recognizing that IAQ problems are primarily a result of inadequate ventilation or poorly maintained ventilation systems, building owners shall ensure that ventilation, heating and air conditioning systems do not pose a health threat to building occupants. Such systems shall provide adequate ventilation according to building usage and shall be properly maintained.

#### **Art. 5**

Building renovation and cleaning, the installation of new wallcoverings, furnishings or carpeting, and the application of pesticides that result in the diffusion of dust, stone and other small particles, toxic gases or other harmful substances in quantities hazardous to health shall be safeguarded by means of local ventilation or other protective devices to ensure the safety of employees and the public.

#### **Art. 6**

1. Recognizing the interests of both smokers and nonsmokers, smoking tobacco will be permitted in indoor spaces, subject to the following restrictions:

- a) Smokers with private offices may smoke in their offices.
- b) Where smokers do not have private offices, they may smoke in a separate smoking room or lounge with adequate [separate] ventilation.
- c) Where nonsmokers are present and are bothered by the smoking of others, the problem may be resolved by:
  - 1) seeking an accommodation on an individual basis with recourse to common courtesy and mutual tolerance;
  - 2) improving ventilation;
  - 3) relocating a workstation;
  - 4) grouping smokers and nonsmokers;
  - 5) using desk top air cleaners or "smokeless" ashtrays for smokers; or
  - 6) partitioning open office spaces.
- d) Specially designated smoking [nonsmoking] areas shall be established in all indoor public places, including means and

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buildings of public transport, medical and healthcare centers, educational institutions, restaurants, coffee shops and entertainment clubs, to provide for the separation of smokers and nonsmokers.

2. Designated smoking [nonsmoking] areas must have clear signs.

**Art. 7**

Whoever violates these provisions is subject to fine.